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NEWSLETTER

Updates



October, 2011 Edition

Corporate News

[1st to 30th Sept, 2011]

MCA may extend demat deadline for shares, bonds

MCA may give more time to unlisted companies to convert their share certificates and bonds into the electronic demat format. The September 30 deadline for this purpose may get extended due to concerns expressed by several small firms, a ministry official said.

Court asks CBI for Law Ministry report on 'associate' firm in 2G Spectrum case

A Special Court hearing the 2G spectrum case on Monday asked the CBI to submit a Law Ministry report regarding the definition of the term “associate”. The report apparently states that Swan Telecom was not an associate of Reliance Telecom Ltd (RTL).

India to topple Japan as world's 3rd-largest economy

India might become the world's third largest economy in 2011 by overtaking Japan in terms of gross domestic product (GDP) measured according to the domestic purchasing power of the rupee. Numbers from 2010 show that Japanese economy was worth \$4.31 trillion, with India being close at \$4.06 trillion.

Tax News [1st to 30th Sept, 2011]

Deal with Vedanta to cost Cairn Energy \$1.5 billion as tax

Cairn Energy will have to fork out about \$1.5 billion as tax for its stake sale deal with Vedanta Resources in Cairn India. Cairn Energy is selling 40 per cent stake in its Indian arm, Cairn India, for \$6.5 billion. The company has already sold 10 per cent holding in Cairn India to Vedanta.

Easier PAN norms for FIIs, foreign nationals

The finance ministry has relaxed norms for foreign nationals and foreign institutional investors to obtain Permanent Account Numbers (PAN) that could also double up as KYC (know your customer) compliance for any investment they make in Indian stocks.

SC issues notice to Citibank on petition filed by I-T dept

The Supreme Court has issued notice to US-based Citibank on a petition filed by the income tax department alleging that the bank was liable to pay more than R59.19 crore as tax during 1991-92 for violating the RBI guidelines on Portfolio Management Scheme (PMS).

Finance ministry grants powers to customs officers to issue notices, raise tax demands

The finance ministry has armed more than 1,200 customs officers with powers to issue notices and raise tax demands to help it raise up to Rs 15,000 crore and bridge an expected shortfall in tax revenues because of the slowdown. This is aimed at thousands of assesses who are refusing to pay their dues, taking shelter under a February Supreme Court ruling that had held only a customs officer assigned to the specific task of assessment could raise tax demands.

Setback for retailers as HC okays service tax on rentals

In a setback to organized retailers, a special bench of the Delhi High Court on Friday upheld the levy of service tax on commercial rentals announced in Budget 2010-11. The court said the tax will take retrospective effect from 2007. Service tax is levied at 10.3% (inclusive of education cess).

Online filing of service tax returns must from October

Faced with 70% rise in service tax evasion cases in the last two years, the revenue department has decided to make it mandatory for all the assesseees to file online returns of their transactions from October onwards. At present, the online filing of returns is mandatory only when the service tax payment is over R10 lakh annually.

Circulars, Notifications and Press Releases

[From 1st to 30th September, 2011]

COMPANY LAW

Circular No. 62/2011 dated 05.09.2011

Exemption from Applicability OF REVISED SCHEDULE VI To Companies coming out with IPO/FPO

- As per earlier Circular, Schedule VI was applicable for accounts closing 31.03.2012
- However, this circular exempts Companies planning Initial Public Offer /Further Public Offer can prepare financial statements in pre-revised format for Financial Year 2011-12
- For period beyond 31st March 2012, revised format shall be applicable

General Circular No. 61/2011 Dated the 5.09.2011

ONLINE INCORPORATION OF COMPANIES

- The Government withdrew its circular facilitating online incorporation of Companies in 24 hours citing that it cannot be put into practice.
- STP mode of approval of e-forms 1, 18 and 32 on the basis of certification and declarations given by the practicing professional is not going to be implemented yet.

A.P. (DIR Series) Circular No. 18 Dated 16.09.2011

LOANS IN RUPEES BY RESIDENT INDIVIDUALS TO NRI CLOSE RELATIVES

- As per this notification, a resident individual is permitted to lend to a Non resident Indian (NRI)/ Person of Indian Origin (PIO) close relative [means relative as defined in Section 6 of the Companies Act, 1956] by way of crossed cheque /electronic transfer, subject to certain conditions.

A.P. (DIR Series) Circular No. 17 dated 17.09.2011

GIFT GIVEN BY RESIDENT INDIVIDUALS TO NRI CLOSE RELATIVES

- It is hereby permitted vide this circular that a resident individual to make a rupee gift to a NRI/PIO who is a close relative of the resident individual [close relative as defined in Section 6 of the Companies Act, 1956] by way of crossed cheque /electronic transfer.

Corporate Case Laws

[Till 30th Sept, 2011]

Advocates not included in list of practicing professionals authorized to certify E-forms under companies Act and LLP Act.

Legum & Law Awareness Society vs. Union of India W.P (CIVIL) No.1819 of 2010

FACTS OF THE CASE:-

The Petitioner filed writ petition praying for direction to include Advocates/Corporate Advocates in the list of practicing professionals and enable them to issue certificates required for e-Forms notified under Companies Act, 1956 and LLP Act, 2008 and to eliminate obligatory certification.

HELD:-

The writ petition was disposed off

REASON:-

The e-Forms 18 and 32 were never filed by Advocates under the Companies Act. With introduction of e-filing of these forms, the power to file and certify these e-forms cannot be granted to them. In this regard, authentication or certification is required to be made by Company Secretaries, Chartered Accountants and Cost Accountants as it was done before. Therefore, prayer made by petitioner could not be granted.

Tax Case Laws

[Till 30th Sept, 2011]

CIT vs. Khemchand Motilal Jain, Tobacco Products (P.) Ltd. [2011] 13 Taxmann

Ransom Paid for Release of Director is Deductible

FACTS OF THE CASE:-

Mr. S, Whole Time Director of the Assessee Company was kidnapped during a business tour and a ransom of Rs. 5,50,000, was paid for his release. The Company claimed this amount under the head 'General Expenses' and claimed deduction thereof, however it was rejected by Assessing Officer on the ground that ransom money paid was not an expenditure incidental to the business. On appeal, CIT (A) and ITAT allowed the claim of Assessee. Subsequently, application under section 256 (1) of Income Tax Act was moved by department before High Court.

HELD:-

The claim of the Assessee was allowed and application was rejected

REASONS:-

The High Court affirmed reasons of CIT (A) and ITAT for holding such deduction as valid claim, as:-

- i. Expenditure is in nature of bonafide business expenditure not a personal expenditure as expressed in contract between Mr. S and the Company whereby bonafide expenditure would be borne by the Company itself.
- ii. Identity of the recipient was established through documentary evidences such as newspaper reports, FIR filed etc.

No levy of Penalty under section 271 (1) (c), if Assessee's claim was not accepted by the Revenue

CIT vs. H.P. State Forest Corpn. Ltd. [2011] 12 Taxmann 425

FACTS OF THE CASE:-

The Assessee, a Government owned Company reduced closing stock on account of deterioration of old stock allegedly on basis of report of concerned officers that realizable value of stock was 25 to 50 percent below cost. The Assessing Officer did not accept the Assessee's explanation and made addition of that amount to assessee's income which was confirmed in the appeal. Thereafter, the Assessing Officer also imposed penalty under section 271 (1) (c) upon the Assessee, who preferred a appeal before Tribunal.

HELD:-

The penalty was deleted.

REASON:-

It was held that Assessee has not fudged amounts, books of accounts or tried to create false evidence. It cannot be said that mere non-acceptance of claim could lead to furnishing of inaccurate particulars to such extent that penalty should be imposed.



Thank You

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